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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCUS HOOPER,	)	Case No. CV 09-07711 VAP
	)	(CW)
Plaintiff,	)	
	)	<b>ORDER DISMISSING PETITION</b>
v.	)	<b>FOR WRIT OF HABEAS CORPUS</b>
	)	<b>WITHOUT PREJUDICE</b>
LINDA SANDERS, WARDEN;	)	
M. VELASCO, CASE	)	
MANAGER,	)	
	)	
Defendants.	)	

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Movant/Defendant Marcus Hooper ("Hooper") filed this  
Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241  
("Petition") on August 28, 2009, in the United States  
District Court for the Western District of New York ("New  
York District Court"). (Doc. No. 1.) Movant's Petition  
was transferred to this Court on October 23, 2009. (See  
Doc. No. 4.) He argues that the Bureau of Prisons  
("BOP") has not given him proper credit for time served  
in custody, and seeks an order that he be released  
forthwith. (Pet. at 1-2.)

1 On February 11, 2010, the Government filed its motion  
2 to dismiss urging dismissal because the BOP calculated  
3 Movant's in-custody time properly, and because Movant  
4 failed to exhaust his administrative remedies with the  
5 BOP before filing suit. (Doc. No. 12 (Mot. Dismiss) at  
6 1.) Movant did not file an opposition to the Motion to  
7 Dismiss.

## 8 9 I. BACKGROUND

10 In 1989, Movant was charged with a violation of 21  
11 U.S.C. § 841(a)(1) and 18 U.S.C. § 924(c). (Decl. of  
12 Bryan Erickson ("Erickson Decl." ¶ 6(a).) Movant  
13 pled guilty before the New York District Court to both  
14 counts, and on August 21, 1992, was sentenced to a total  
15 of 94 months imprisonment. (Erickson Decl., Ex. A. (J. &  
16 Commitment Order, Case No. 89 CR 000158-001-A).) There  
17 is no indication in the record before the Court that  
18 Movant filed a direct appeal from his conviction or  
19 sentence.

## 20 21 II. DISCUSSION

22 The Government first contends Movant's petition is  
23 moot because on an unspecified date after Movant filed  
24 his Petition, the BOP awarded him 573 days credit for  
25 time spent in federal custody. (Erickson Decl., Ex. F at  
26 4.) Given the sparsity of allegations in Movant's  
27 Petition, it is unclear if the BOP awarded Movant credit  
28

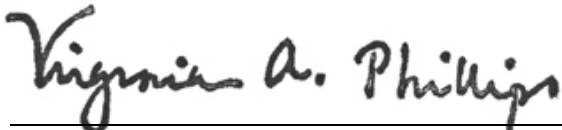
1 for the entire period for which he asserts credit is due.  
2 The Court need not resolve this issue, however, as the  
3 Petition should not have been brought in the first  
4 instance.

5  
6 "Federal prisoners are required to exhaust their  
7 federal administrative remedies prior to bringing a  
8 petition for a writ of habeas corpus in federal court."  
9 Martinez v. Roberts, 804 F.2d 570, 571 (9th Cir. 1986)  
10 (per curiam) (collecting cases); see also Tucker v.  
11 Carlson, 925 F.2d 330, 332 (9th Cir. 1991) ("Generally, a  
12 federal prisoner is required to exhaust his federal  
13 administrative remedies before filing a habeas  
14 petition.").

15  
16 Here, even if Movant's petition is not moot, it is  
17 improper because Movant has not exhausted the available  
18 federal administrative remedies prior to bringing his  
19 petition. On May 21, 2009, the BOP denied Movant's  
20 request for an administrative remedy, but permitted  
21 Movant to "submit an appeal on the appropriate form (BP-  
22 10) to the Regional Director within twenty (20) days of  
23 the date of this [denial]." (Pet., Ex. 1B.) Movant did  
24 not appeal this response. (Decl. of Eliezer Ben-Shmuel ¶  
25 4.) Accordingly, Movant has not exhausted his  
26 administrative remedies.

1       The Court therefore DISMISSES Movant's Petition  
2 WITHOUT PREJUDICE.

3  
4  
5 Dated: May 31, 2011

  
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VIRGINIA A. PHILLIPS  
United States District Judge